

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE AT GREENEVILLE**

DARLA L. PFENNINGER, a citizen)
and resident of Hamblen County, Tennessee,)

Plaintiff)

v.)

No. _____

THE PRUDENTIAL INSURANCE)
COMPANY OF AMERICA,)
and US FOODS, INC.,)

Defendants)

COMPLAINT

Comes now the Plaintiff, Darla L. Pfenninger, by and through counsel, and for cause of action would state as follows:

JURISDICTION

1. The Plaintiff, Darla L. Pfenninger, is a citizen and resident of Hamblen County, Tennessee.

2. The Defendant, The Prudential Insurance Company of America (“Prudential”), is an insurance company with its principal place of business in Newark, NJ, and may be served with process through the Tennessee Commissioner of Insurance, 500 James Robertson Parkway, Nashville, TN 37243. At all material times Defendant, Prudential, acted by and through its agents, servants and/or employees who, in turn, were acting within the course and/or scope of their agency or employment.

3. The Defendant, US Foods, Inc., is a company duly organized under the laws of Delaware, with its principal place of business at 9399 W Higgins Road, Suite 500, Rosemont, Illinois 60018-4992. US Foods, Inc. may be served with process through its registered agent, CT Corporation System, at 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710.

At all material times Defendant US Foods, Inc., acted by and through its agents, servants and/or employees who, in turn, were acting within the course and/or scope of their agency or employment.

4. The Plaintiff brings this action to recover benefits due for her Short Term Disability and Long Term Disability pursuant to the Employment Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* (ERISA), and particularly 29 U.S.C. § 1132(a)(1)(B).

5. Jurisdiction over Plaintiff's claim is conferred on this Honorable Court pursuant to 29 U.S.C. § 1132(e)(1).

6. Venue over Plaintiff's claim is conferred on this Honorable Court pursuant to 29 U.S.C. § 1132(e)(2).

7. The Plaintiff at all times relevant to this action was a "participant" in the Policy as defined by 29 U.S.C. § 1002(7)

8. The Defendant Policy is an "employee welfare benefit plan" as defined by 29 U.S.C. § 1002(1).

9. The Defendant Prudential, is a "party in interest" as defined by 29 U.S.C. § 1002(14)(A) and a "named fiduciary" as defined by 29 U.S.C. § 1102(a)(2)(A) which has the authority to control and manage the operation and administration of the plan pursuant to 29 U.S.C. § 1102(a)(1).

10. The Defendant US Foods, Inc. is a “party in interest” as defined by 29 U.S.C. § 1002(14)(A) and a “named fiduciary” as defined by 29 U.S.C. § 1102(a)(2)(A) which has the authority to control and manage the operation and administration of the plan pursuant to 29 U.S.C. § 1102(a)(1).

FACTS

11. Plaintiff worked for Defendant US Foods, Inc. for approximately 2 years.

12. Plaintiff developed certain physical conditions, including polymyositis, depression, and benign tremors, which made it difficult for her to work, and ultimately Plaintiff’s conditions resulted in a permanent and total disability in which Plaintiff cannot do any work for which she is or can become qualified by reason of her education, experience or training and is not expected to be able to continue such work for the duration of her life.

13. On or about March 14, 2013, Plaintiff ceased working due to her disabilities and submitted a claim to Defendants for short term disability and long term disability benefits.

14. Defendant paid some short term disability benefits, but terminated them after only a short period of time.

15. On August 12, 2013, the Defendants wrote Plaintiff denying her claims for benefits.

15. Plaintiff timely appealed the denial and cessation of her benefits.

16. By letter dated January 31, 2014, Defendants sent a letter informing Plaintiff of their administrative review of the adverse prior decisions and informed Plaintiff that benefits are not payable.

17. Defendants’ decision to deny Plaintiff short term and long term disability

benefits under the Policy was arbitrary and capricious.

18. Defendants have failed to provide short term and long term disability benefits due Plaintiff under the Policy.

19. Defendants have failed to discharge their fiduciary duties with respect to the Policy solely in the interest of plan participants as required by 29 U.S.C. § 1104(a)(1).

WHEREFORE, premises considered, Plaintiff respectfully requests this Honorable Court for the following:

A. A declaration that Defendants have breached their fiduciary duties, responsibilities, and obligations imposed upon it under ERISA.

B. A declaration that Plaintiff is disabled within the meaning of the Policy and is entitled to short term and long term disability benefits from the Policy.

C. Order Defendants to pay Plaintiff back benefits due under the Policy.

D. Order Defendants to pay prejudgment interest at the rate set by law on the disability benefits wrongfully withheld from Plaintiff or, if the amount is greater, order Defendants to pay her the amounts they have earned on the money wrongfully withheld from her as other equitable relief.

E. Order Defendants to pay Plaintiff the costs of her suit and reasonable attorney fees.

F. Grant such other and further relief to which Plaintiff is entitled.

Respectfully submitted this 26th day of February, 2013.

s/ John P. Dreiser
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